

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

DONALD M. MISSIRLIAN

FAA Order No. 97-19

Served: May 23, 1997

Docket No. CP95WP0282

DECISION AND ORDER

Respondent Donald M. Missirlian has appealed from the initial decision of Administrative Law Judge Burton S. Kolko canceling the hearing and assessing a civil penalty for an alleged violation of 14 C.F.R. § 107.20 (entering a sterile area without submitting to screening) after Mr. Missirlian failed to file a timely answer to the complaint.¹ This decision affirms the law judge's assessment of a \$1,000 civil penalty.

The Rules of Practice require respondents to file a written answer not later than 30 days after service of the complaint. 14 C.F.R. § 13.209(a). If the respondent has been served by mail, he or she has 5 additional days to file a document. 14 C.F.R. § 13.211(e). The complaint in this case was served by mail on October 18, 1995. As a result, the deadline for Mr. Missirlian's answer was November 22, 1995. There is no dispute that Mr. Missirlian failed to file an answer to the complaint by November 22, 1995.

¹ A copy of the law judge's order is attached.

Under the Rules of Practice, Mr. Missirlian's failure to file an answer by the deadline can only be excused for good cause.² Thus, the issue in this appeal is whether Mr. Missirlian has shown good cause for his failure to file an answer by the deadline.

In a letter to agency counsel dated February 15, 1996, Mr. Missirlian explained his failure to file a timely answer as follows:

I do not recall seeing the complaint, and if I did, it did not appear to need a response. I thought everything I needed to explain was contained in the appeal sent to you by certified mail on September 27, 1995 [apparently referencing Mr. Missirlian's response to the Notice of Proposed Civil Penalty of September 27, 1995].

This explanation is insufficient to show good cause. Mr. Missirlian has not claimed that he did not *receive* the complaint -- just that he does not recall seeing it.³

Moreover, his claim that the complaint did not appear to require a response lacks merit, given that the complaint's cover letter contained the following prominent notice, all in capital letters:

NOTE TO RESPONDENT: SECTION 13.209 OF THE CP RULES OF PRACTICE REQUIRE THAT A WRITTEN ANSWER TO THE COMPLAINT BE FILED NOT LATER THAN 30 DAYS AFTER SERVICE OF THE COMPLAINT.

(Emphasis in original.) Finally, pre-complaint writings, including responses to notices of proposed civil penalty, do not satisfy the requirement for an answer. In the Matter of Barnhill, FAA Order No. 92-32 at 6, 1992 FAA LEXIS 285, at *8 (May 5, 1992). If Mr. Missirlian wanted to rely on correspondence provided to the FAA

² 14 C.F.R. § 13.209(f) provides that a person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation in the complaint.

³ The agency attorney sent the complaint to Mr. Missirlian by certified mail, return receipt requested, at the address Mr. Missirlian provided.

during an earlier stage of the proceedings, he needed to re-file that correspondence as the answer before the deadline. In the Matter of Grant, FAA Order No. 94-5 at 6, 1994 FAA LEXIS 212, at *7 (March 10, 1994).

For these reasons, Mr. Missirlian has failed to show good cause for his failure to file a timely answer to the complaint. As a result, the law judge's order assessing a \$1,000 civil penalty is affirmed.⁴



BARRY L. VALENTINE
Acting Administrator
Federal Aviation Administration

Issued this 22 day of MAY, 1997.

⁴ Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1996).